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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL MOEBIUS,

Plaintiff,

vs.

TONY CARNEVALE; DESERT ART, LLC  
d/b/a CARNEVALE GALLERY; CAESARS  
ENTERTAINMENT, INC; and DOES 1  
through 10 inclusive,

Defendants.

Case No.: 2:21-cv-00970-ART-VCF

**MOTION FOR LEAVE TO FILE  
UNDER SEAL THE DECLARATION  
OF TONIA CHAFETZ IN SUPPORT OF  
DEFENDANT CAESARS  
ENTERTAINMENT, INC.'S MOTION  
FOR SUMMARY JUDGMENT  
PURSUANT TO FED. R. CIV. P. 56 AND  
EXHIBIT A ATTACHED THERETO**

Pursuant to LR-IA 10-5, Defendant Caesars Entertainment, Inc. ("Caesars Entertainment"), by and through its counsel, the law firm of Greenberg Traurig, LLP, hereby submits this Motion for Leave to File Under Seal the Declaration of Tonia Chafetz in Support of Defendant Caesars Entertainment, Inc.'s Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56 and Exhibit A Attached Thereto [ECF No. 32] (the "Motion").

1 This Motion is made and based upon the papers and pleadings on file herein, the attached  
2 memorandum of points and authorities, and any oral argument the Court may permit at any hearing  
3 on this matter.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION AND RELEVANT FACTS**

6 This case relates to a single claim of copyright infringement asserted by Plaintiff Michael  
7 Moebius (“Plaintiff”) against Defendants Tony Carnevale (“Carnevale”), Desert Art, LLC d/b/a  
8 Carnevale Gallery (“Carnevale Gallery,” together with Carnevale, the “Carnevale Defendants”),  
9 and Caesars Entertainment, Inc. (“Caesars Entertainment”). Plaintiff alleges that he had previously  
10 entered into a consignment agreement with the Carnevale Gallery relating to the display and sale  
11 of Plaintiff’s artwork in Carnevale Gallery’s retail store, then located within Caesars Palace Las  
12 Vegas. Plaintiff alleges that the Carnevale Defendants improperly displayed a single counterfeit  
13 version of one of Plaintiff’s copyrighted artworks after the termination of the parties’ consignment  
14 agreement, and in so doing infringed Plaintiff’s copyright.

15 As set forth in the related Motion for Summary Judgment, Caesars Entertainment was not  
16 a party to the consignment agreement. Nor was Caesars Entertainment a party to the Revocable  
17 License Agreement governing the relationship between the Carnevale Defendants and their  
18 landlord, Desert Palace, LLC (“Desert Palace”), the company which controls and manages the  
19 operation of Caesars Palace. Nonetheless, Plaintiff has alleged that Caesars Entertainment should  
20 be held vicariously liable for copyright infringement allegedly committed by its subsidiary’s  
21 tenant.

22 Plaintiff’s argument fails as a matter of law, and the information contained in the Revocable  
23 License Agreement between Desert Palace and an entity affiliated with the Carnevale Defendants  
24 is relevant to the Court’s analysis of these legal positions. However, the Revocable License  
25 Agreement and the foundational declaration relating to that agreement reflect highly sensitive,  
26 confidential, proprietary business information concerning Desert Palace’s business practices that  
27 could harm its competitive standing in the marketplace if revealed to the public. Accordingly,  
28

1 Caesars Entertainment seeks to file the Revocable License Agreement and the related declaration  
2 under seal to protect this confidential business information.

3 **II. LEGAL ARGUMENT**

4 Although there is a strong presumption of public access to judicial records utilized in a  
5 dispositive motion, public access to such records “is not absolute.” *Kamakana v. City & Cnty of*  
6 *Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). Courts may allow sealing of a party’s  
7 confidential, non-public information when “compelling reasons” for non-disclosure outweigh  
8 those favoring public access. *Id.* at 1179. Compelling reasons may exist “when such ‘court files  
9 might have become a vehicle for improper purposes,’ such as the use of records to gratify private  
10 spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* (quoting  
11 *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

12 Pursuant to Federal Rule of Civil Procedure 5.2(d), a court “may order that a filing be made  
13 under seal without redaction,” and the Supreme Court has acknowledged that the decision to seal  
14 documents is “one best left to the sound discretion of the trial court, a discretion to be exercised in  
15 light of the relevant facts and circumstances of the particular case.” *Nixon v. Warner*  
16 *Communications, Inc.*, 435 U.S. 589, 599 (1978). In deciding the degree of protection required,  
17 courts should consider “the interests [of] the parties in light of the public interest and the duty of  
18 the courts.” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995), quoting *Nixon*, 435 U.S.  
19 at 602; *see also Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984) (interpreting FRCP 26(a)  
20 as conferring “broad discretion” upon trial courts in deciding “when a protective order is  
21 appropriate and what degree of protection is required”).

22 Other courts have noted the importance of allowing corporate entities to file sensitive  
23 records and information under seal in order to protect legitimate business interests. “Protective  
24 orders and filings under seal are the primary means by which the courts ensure full disclosure of  
25 relevant information, while still preserving the parties’ (and third parties’) legitimate expectation  
26 that confidential business information, proprietary technology and trade secrets will not be publicly  
27 disseminated.” *In re Adobe Sys. Inc. Secs. Litig.*, 141 F.R.D. 155, 161-62 (N.D. Cal. 1992) (citing

1 *Johnson Controls, Inc. v. Phoenix Control Sys.*, 886 F.2d 1173, 1176 (9th Cir. 1989) and *Henry*  
2 *Hope X-Ray Prods. Inc. v. Marron Carrel, Inc.*, 674 F.2d 1336, 1342 (9th Cir. 1982)). In short,  
3 “courts have refused to permit their files to serve...as sources of business information that might  
4 harm a litigant’s competitive standing.” *In re Reporters Comm. for Freedom of the Press*, 773  
5 F.2d 1325, 1333 (D.C. Cir. 1985) (internal quotations and citations omitted). *See also In re*  
6 *Electronic Arts, Inc.*, 298 Fed. App’x 568, 569 (9th Cir. 2008) (“[T]he common-law right of  
7 inspection has bowed before the power of a court to ensure that its records are not used...as sources  
8 of business information that might harm a litigant’s competitive standing.”) (quoting *Nixon*, 435  
9 U.S. at 598.).

10 Here, the Declaration of Tonia Chafetz and the Revocable License Agreement attached  
11 thereto as Exhibit A each contain a recitation of confidential business terms and information.  
12 Specifically, the declaration and Revocable License Agreement reflect specific license rates,  
13 terms, and conditions that were negotiated at arm’s length between Desert Palace and an affiliate  
14 of the Carnevale Defendants. Desert Palace maintains the terms, conditions, and rates set forth in  
15 its license and lease agreements with third parties confidential and protects such information by  
16 including confidentiality provisions within the agreements themselves. The Revocable License  
17 Agreement contains such a confidentiality provision contemplating that all information relating  
18 to Desert Palace and its business, which would include the information contained in the license  
19 itself, would be kept confidential by the licensee. If this sensitive information was filed publicly,  
20 it could be used to Desert Palace’s, and Caesars Entertainment’s, competitive disadvantage as  
21 third parties could use such terms in their lease negotiations adverse to Desert Palace and Caesars  
22 Entertainment, and Desert Palace’s and Caesars Entertainment’s competitors could access such  
23 information and use it to unfairly compete for tenants and licensees. As the public disclosure of  
24 this information “might harm [Caesars Entertainment’s] competitive standing[],” filing of the  
25 declaration and Revocable License Agreement under seal is appropriate.

26 ///

1 **III. CONCLUSION**

2 Based on the reasons set forth herein, Caesars Entertainment respectfully requests that the  
3 Court permit it to file the Declaration of Tonia Chafetz and the Revocable License Agreement  
4 attached thereto as Exhibit A under seal in their entirety. Pursuant to LR IA 10-5(a), Caesars  
5 Entertainment further respectfully requests that the documents remain sealed until the Court's  
6 determination on this Motion.

7 DATED this 4<sup>th</sup> day of August, 2022.

8 GREENBERG TRAURIG, LLP

9 /s/ Christopher R. Miltenberger

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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that a copy of the foregoing *Motion for Leave to File Under Seal the Declaration of Tonia Chafetz in Support of Defendant Caesars Entertainment, Inc.’s Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56 and Exhibit A Attached Thereto* was filed electronically via the Court’s CM/ECF system. Notice of Filing will be served on all parties by operation of the Court’s CM/ECF system.

Dated this 4<sup>th</sup> day of August, 2022.

/s/ Andrea Lee Rosehill

An employee of Greenberg Traurig, LLP